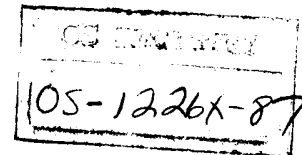


II

100TH CONGRESS  
1ST SESSION

**S. 996**



To increase penalties for espionage, to enhance security at United States missions abroad, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, MARCH 30), 1987

Mr. DOLE (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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**A BILL**

To increase penalties for espionage, to enhance security at United States missions abroad, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Comprehen-  
5 sive Anti-Espionage Act of 1987".

6 PENALTY FOR ESPIONAGE

7 SEC. 2. Section 794 of title 18, United States Code, is  
8 amended—

9 (1) in subsection (a), by—

10 (A) inserting "(1)" after "(a)";

1 (B) striking out "any term of years or for  
2 life" and by inserting in lieu thereof "a term of  
3 20 years to life"; and

4 (C) inserting at the end thereof the following:

5 "(2) The sentence of death may not be imposed for an  
6 offense under this subsection occurring during a period other  
7 than war unless the jury or, if there is no jury, the court finds  
8 that the offense directly concerned—

9 "(A) nuclear weaponry, military spacecraft or sat-  
10 ellites, early warning systems, or other means of de-  
11 fense or retaliation against large-scale attack;

12 "(B) war plans;

13 "(C) communications intelligence or cryptographic  
14 information;

15 "(D) sources or methods of intelligence or coun-  
16 terintelligence operations; or

17 "(E) any other major weapons system or major  
18 element of defense strategy.";

19 (2) in subsection (b) by striking out "any term of  
20 years or for life" and inserting in lieu thereof the fol-  
21 lowing "a term of 20 years to life"; and

22 (3) by inserting after subsection (c) the following:

23 "(d)(1) A person shall be subjected to the penalty of  
24 death for the offense prohibited by this section only if a hear-  
25 ing is held in accordance with this subsection.

1       “(2)(A) If, in a case involving an offense described in  
2 this section, the attorney for the Government believes that  
3 the circumstances of the offense are such that a sentence of  
4 death is justified under this subsection, he shall, at a reasona-  
5 ble time before the trial, or before acceptance by the court of  
6 a plea of guilty, or at such time thereafter as the court may  
7 permit upon a showing of good cause, sign and file with the  
8 court, and serve on the defendant, a notice—

9               “(i) stating that the Government believes that the  
10       circumstances of the offense are such that, if the de-  
11       fendant is convicted, a sentence of death is justified  
12       under this chapter; and

13              “(ii) setting forth the aggravating factor or factors  
14       that the Government, if the defendant is convicted,  
15       proposes to prove as justifying a sentence of death.

16 The court may permit the attorney for the Government to  
17 amend the notice upon a showing of good cause.

18       “(B) If the attorney for the Government has filed a  
19 notice as required under subparagraph (A) and the defendant  
20 is found guilty of an offense described in this section, the  
21 judge who presided at the trial or before whom the guilty  
22 plea was entered, or another judge if that judge is unavail-  
23 able, shall conduct a separate sentencing hearing to deter-  
24 mine the punishment to be imposed. Prior to such a hearing,  
25 no presentencing report shall be prepared by the United

1 States Probation Service, notwithstanding the provisions of  
2 Rule 32(e) of the Federal Rules of Criminal Procedure. The  
3 hearing shall be conducted—

4 “(i) before the jury that determined the defend-  
5 ant’s guilt;

6 “(ii) before the jury impaneled for the purpose of  
7 the hearing if—

8 “(I) the defendant was convicted upon a plea  
9 of guilty;

10 “(II) the defendant was convicted after a  
11 trial before the court sitting without a jury;

12 “(III) the jury that determined the defend-  
13 ant’s guilt was discharged for good cause; or

14 “(IV) after initial imposition of sentence  
15 under this section, reconsideration of the sentence  
16 under this section is necessary; or

17 “(iii) before the court alone, upon the motion of  
18 the defendant and with the approval of the attorney for  
19 the Government. A jury impaneled pursuant to clause  
20 (ii) shall consist of twelve members, unless, at any time  
21 before the conclusion of the hearing, the parties stipu-  
22 late, with the approval of the court, that it shall con-  
23 sist of a lesser number.

24 “(C) At the hearing, information may be presented as to  
25 any matter relevant to the sentence, including any mitigating

1 or aggravating factor permitted or required to be considered  
2 under paragraphs (3) and (4). Information presented may in-  
3 clude the trial transcript and exhibits if the hearing is held  
4 before a jury or judge not present during the trial. Any other  
5 information relevant to a mitigating or aggravating factor  
6 may be presented by either the attorney for the Government  
7 or the defendant, regardless of its admissibility under the  
8 rules governing admission of evidence at criminal trials,  
9 except that information may be excluded if its probative value  
10 is substantially outweighed by the danger of creating unfair  
11 prejudice, confusing the issues, or misleading the jury. The  
12 attorney for the Government and the defendant shall be per-  
13 mitted to rebut any information received at the hearing, and  
14 shall be given fair opportunity to present argument as to the  
15 adequacy of the information to establish the existence of any  
16 aggravating or mitigating factor, and as to the appropriate-  
17 ness in the case of imposing a sentence of death. The attor-  
18 ney for the Government shall open the argument. The de-  
19 fendant shall be permitted to reply. The attorney for the  
20 Government shall then be permitted to reply in rebuttal. The  
21 burden of establishing the existence of any aggravating factor  
22 is on the Government, and is not satisfied unless the exist-  
23 ence of such a factor is established beyond a reasonable  
24 doubt. The burden of establishing the existence of any miti-  
25 gating factor is on the defendant, and is not satisfied unless

1 the existence of such a factor is established by a preponder-  
2 ance of the information.

3       “(D) The jury, or if there is no jury, the court, shall  
4 consider all the information received during the hearing. It  
5 shall return a special finding as to each mitigating and aggra-  
6 vating factor, concerning which information is presented at  
7 the hearing, required to be considered under paragraphs (3)  
8 and (4). The jury must find the existence of a mitigating or  
9 aggravating factor by a unanimous vote, although it is unnec-  
10 essary that there be a unanimous vote on any specific miti-  
11 gating or aggravating factor if a majority of the jury finds the  
12 existence of such a specific factor.

13       “(E) If an aggravating factor is found to exist under  
14 paragraph (4), the jury, or if there is no jury, the court, shall  
15 then consider whether all the aggravating factors found to  
16 exist sufficiently outweigh all the mitigating factors found to  
17 exist to justify a sentence of death, or, in the absence of a  
18 mitigating factor, whether the aggravating factors alone are  
19 sufficient to justify a sentence of death. Based upon this con-  
20 sideration, the jury by unanimous vote, or if there is no jury,  
21 the court, shall return a finding as to whether a sentence of  
22 death is justified.

23       “(F) In a hearing held before a jury, the court, prior to  
24 the return of a finding under subsection (e), shall instruct the  
25 jury that, in considering whether a sentence of death is justi-

1 fied, it shall not consider the race, color, national origin,  
2 creed, or sex of the defendant. The jury, upon return of a  
3 finding under subsection (e), shall also return to the court a  
4 certificate, signed by each juror, that consideration of the  
5 race, color, national origin, creed, or sex of the defendant  
6 was not involved in reaching the juror's individual decision.

7       “(3) In determining whether a sentence of death is to be  
8 imposed on the defendant, the jury, or if there is no jury, the  
9 court shall consider whether at the time of the offense—

10               “(A) the defendant had the capacity to appreciate  
11 the wrongfulness of his conduct;

12               “(B) the capacity of the defendant to conform his  
13 conduct to the requirements of law was significantly  
14 impaired, but not so impaired as to constitute a defense  
15 to the charge;

16               “(C) the defendant was under unusual and sub-  
17 stantial duress, although no such duress as constitutes  
18 a defense to the charge; and

19               “(D) the defendant was the principal (as defined  
20 in section 2(a) of this title) in the offense, which was  
21 committed by another, but his participation was rela-  
22 tively minor, although not so minor as to constitute a  
23 defense to the charge.

24 The jury or, if there is no jury, the court, may consider  
25 whether any other mitigating factor exists.

1       “(4) In determining whether a sentence of death is to be  
2 imposed on the defendant, the jury, or if there is no jury, the  
3 court shall consider whether—

4               “(A) the defendant has been previously convicted  
5 of another offense involving espionage or treason for  
6 which either a sentence of life imprisonment or death  
7 was authorized by statute;

8               “(B) in the commission of the offense, the defend-  
9 ant knowingly created a grave risk of substantial  
10 danger to the national security; and

11               “(C) in the commission of the offense, the defend-  
12 ant knowingly created grave risk of death to another  
13 person.

14 The jury, or if there is no jury, the court, may consider  
15 whether any other aggravating factor exists.

16               “(e) The court shall not impose a sentence of death on  
17 the defendant if the jury or, if there is no jury, the court finds  
18 that at the time of the offense the defendant was under the  
19 age of eighteen.

20               “(f) Upon a finding that a sentence of death is justified,  
21 the court shall sentence the defendant to death. Upon a find-  
22 ing that a sentence of death is not justified, or that no aggra-  
23 vating factor required to be found exists, the court shall  
24 impose any sentence other than death that is authorized by  
25 law. Notwithstanding any other provision of law, the court



1 shall not place on probation or suspend the sentence of any  
2 person convicted of a violation of this section, nor shall any  
3 term of imprisonment imposed under this section run concur-  
4 rently with any other term of imprisonment. No person sen-  
5 tenced to a term of years under this section shall be eligible  
6 for parole during the term of imprisonment imposed.

7       “(5)(A) In a case in which a sentence of death is im-  
8 posed, the sentence shall be subject to review by the court of  
9 appeals upon appeal by the defendant. Notice of appeal must  
10 be filed within the time specified for the filing of a notice of  
11 appeal. An appeal under this section may be consolidated  
12 with an appeal of the judgment of conviction and shall have  
13 priority over all other cases.

14       “(B) The court of appeals shall review the entire record  
15 in the case, including—

16               “(i) the evidence submitted during the trial;

17               “(ii) the information submitted during the sentenc-  
18 ing hearing;

19               “(iii) the procedures employed in the sentencing  
20 hearing; and

21               “(iv) the special findings returned.

22       “(C)(i) If the court of appeals determines that—

23               “(I) the sentence of death was not imposed under  
24 the influence of passion, prejudice, or any other arbi-  
25 trary factor; and

1           “(II) the information supports the special finding  
2           of the existence of an aggravating factor required to be  
3           considered, it shall affirm the sentence.

4           “(ii) In any other case, the court of appeals shall remand  
5           the case for consideration.

6           “(iii) The court of appeals shall state in writing the rea-  
7           sons for its disposition of an appeal of a sentence of death  
8           under this section.

9           “(6) A person who has been sentenced to death pursu-  
10          ant to the provisions of this chapter shall be committed to the  
11          custody of the Attorney General until exhaustion of the pro-  
12          cedures for appeal of the judgment of conviction and for  
13          review of the sentence. When the sentence is to be imple-  
14          mented, the Attorney General shall release the person sen-  
15          tenced to death to the custody of a United States marshal,  
16          who shall supervise implementation of the sentence in the  
17          manner prescribed by the law of the State in which the sen-  
18          tence is imposed. If the law of such State does not provide  
19          for implementation of a sentence of death, the court shall  
20          designate another State, the law of which does so provide,  
21          and the sentence shall be implemented in the latter State in  
22          the manner prescribed by such law. A sentence of death shall  
23          not be carried out upon a woman while she is pregnant.

24          “(7) A United States Marshal charged with supervising  
25          the implementation of a sentence of death may use appropri-

1 ate State or local facilities for the purpose, may use the serv-  
2 ices of an appropriate State or local official or a person such  
3 an official employs for the purpose, and shall pay the costs  
4 thereof in an amount approved by the Attorney General.”.

5 AMENDMENT TO FOREIGN MISSIONS ACT

6 SEC. 3. The Foreign Missions Act (22 U.S.C. 4301 et  
7 seq.) is amended by adding at the end thereof the following  
8 new section:

9 “APPLICATION TO CERTAIN COMMUNIST COUNTRIES

10 “SEC. 215. (a) Notwithstanding any other provision of  
11 this title, the Secretary shall apply to each foreign mission in  
12 the United States of the German Democratic Republic, Hun-  
13 gary, Czechoslovakia, Poland, Bulgaria, Rumania, and Cuba  
14 the same terms, limitations, restrictions, and conditions  
15 which are applied under this title to the foreign mission in the  
16 United States of the Soviet Union unless the President deter-  
17 mines and so reports to the Select Committee on Intelligence  
18 of the Senate and the Permanent Select Committee on Intel-  
19 ligence of the House of Representatives in a classified report  
20 that national security and foreign policy circumstances re-  
21 quire that this section be waived in specific circumstances  
22 with respect to such country or particular agency of such  
23 country.

24 “(b) The Secretary shall prepare and transmit to the  
25 Select Committee on Intelligence of the Senate and the Per-

1 manent Select Committee on Intelligence of the House of  
2 Representatives a report describing—

3 “(1) not later than thirty days after the date of  
4 the enactment of this section, the plans of the Secre-  
5 tary for implementing this section; and

6 “(2) not later than six months thereafter, the ac-  
7 tions taken pursuant to these plans.”.

8 AVAILABILITY OF FUNDS FOR THE UNITED STATES PRO-  
9 PORTIONATE SHARE OF THE UNITED NATIONS  
10 OFFICE OF RESEARCH AND INFORMATION COLLEC-  
11 TION

12 SEC. 4. Notwithstanding any other provision of law,  
13 none of the funds appropriated or otherwise made available in  
14 any fiscal year for the “International organizations and pro-  
15 grams account” of the Department of State may be available  
16 for the United States proportionate share of the United Na-  
17 tions expenses in operating the United Nations Office of  
18 Research and Information Collection or any unit thereof.

19 AVAILABILITY OF FUNDS FOR ADDITIONAL CONSTRUCTION  
20 ACTIVITY IN CERTAIN COMMUNIST COUNTRIES

21 SEC. 5. Notwithstanding any other provision of law,  
22 none of the funds appropriated or otherwise made available  
23 by any provision of law shall be available for undertaking any  
24 additional construction activity on any project planned or un-  
25 derway in any Communist country until 30 days after—

1 (1) receipt by the Congress of a detailed report  
2 submitted by the Secretary of State and approved by  
3 the Directors of the Central Intelligence Agency, De-  
4 fense Intelligence Agency, and National Security  
5 Agency, on any such project. Such report shall  
6 include—

7 (A) an evaluation of all security-related fac-  
8 tors which must be and are being considered in  
9 the planning and implementation of such project;  
10 and

11 (B) how any existing and potential security  
12 related issues and problems are being addressed in  
13 the planning and implementation of such project;  
14 and

15 (2) receipt by the Congress of a certification made  
16 by the President that appropriate and adequate steps  
17 have been taken to ensure that the project may pro-  
18 ceed without undue risk that American security inter-  
19 ests will be compromised thereby.

20 OCCUPATION OF THE NEW SOVIET EMBASSY IN WASHING-

21 TON, D.C., ON IMPROVED UNITED STATES SECURITY

22 ARRANGEMENTS FOR THE EMBASSY IN MOSCOW

23 SEC. 6. (a) Notwithstanding any other provision of law,  
24 including any international agreement, the Secretary of State  
25 shall not permit the Soviet Union to occupy any facility in  
26 the Washington, D.C., metropolitan area constructed on or

1 after the date of entry into force of the agreement between  
2 the United States of America and the Union of Soviet Social-  
3 ist Republics on embassy sites, signed May 16, 1969, unless  
4 the President, after consultation with each appropriate  
5 United States agency, certifies to the Congress that agree-  
6 ment has been reached between the United States of America  
7 and the Union of Soviet Socialist Republics (1) establishing a  
8 new location for the United States diplomatic mission in  
9 Moscow and that the terms and conditions of construction  
10 ensure suitable security protection for that mission, or (2)  
11 providing that the Union of Soviet Socialist Republics will  
12 compensate the United States of America for all costs associ-  
13 ated with establishing suitable security protection at the cur-  
14 rent United States diplomatic mission site in Moscow. If such  
15 certification is submitted, current prohibitions on Soviet occu-  
16 pancy of the chancery building at Mount Alto, as detailed in  
17 section 154, Public Law 99-93, shall remain in effect until  
18 the United States is able to occupy its new facility in  
19 Moscow. If such certification has not been submitted to Con-  
20 gress by October 31, 1987, or if such certification shall have  
21 been disapproved in accordance with subsection (b), the Sec-  
22 retary of State shall require that the Union of Soviet Socialist  
23 Republics shall vacate, no later than December 31, 1987, all  
24 buildings and facilities in the area formerly occupied by the  
25 Mount Alto Veterans' Hospital in Washington, D.C.

1       (b)(1) Subsection (a) shall not apply if the Congress  
2 within 30 days after receipt of a certification enacts a joint  
3 resolution disapproving the certification.

4       (2) Such resolution shall be considered in the Senate in  
5 accordance with the provisions of section 601(b) of the Inter-  
6 national Security Assistance and Arms Export Control Act of  
7 1976.

8       REORGANIZATION OF DEPARTMENT OF STATE OFFICES  
9       INVOLVED IN OVERSEAS CONSTRUCTION PROJECTS

10       SEC. 7. (a) Notwithstanding any other provision of law,  
11 the Under Secretary of State for Management shall have  
12 overall management authority and responsibility for all offices  
13 and personnel of the State Department involved in the plan-  
14 ning and implementation of State Department-managed con-  
15 struction projects undertaken in any foreign country, includ-  
16 ing the Bureau for Diplomatic Security, the Foreign Build-  
17 ings Office, and the Office of Foreign Missions.

18       (b) On the date of enactment of this Act, direct adminis-  
19 trative authority and responsibility over the Foreign Build-  
20 ings Office of the Department of State and all employees  
21 thereof shall be transferred from the Assistant Secretary of  
22 State for Administration to the Assistant Secretary of State  
23 for Diplomatic Security.

24       (c) The Secretary of State shall transfer such personnel,  
25 any other records, and funds as may be necessary to imple-  
26 ment subsection (a).

1 (d) By December 1 of each year, the Secretary of State  
2 shall submit to the Congress a report covering each govern-  
3 ment construction project planned or underway in a foreign  
4 country for which funds will be expended in that fiscal year.  
5 Such report shall include—

6 (1) an evaluation of all security-related factors  
7 which must be and are being considered in the plan-  
8 ning and implementation of such project;

9 (2) how any existing or potential security-related  
10 issues and problems are being addressed in the plan-  
11 ning and implementation of such project; and

12 (3) the contracting and construction plan for such  
13 project.

14 (e) There shall be established an interagency board, con-  
15 sisting of representatives of the Department of State, Central  
16 Intelligence Agency, Defense Intelligence Agency, and Na-  
17 tional Security Agency, to be headed by the Under Secretary  
18 of State for Management. The board shall review and ap-  
19 prove all reports submitted under subsection (d), to include  
20 specific approval of the plan submitted pursuant to subsection  
21 (d)(3).

22 (f) The Secretary of State shall consider utilizing the  
23 Army Corps of Engineers, in lieu of other government or  
24 private contractors, to manage the construction of any gov-  
25 ernment project in any Communist-controlled country.



1 (g) Whenever the Secretary of State decides not to uti-  
2 lize the Army Corps of Engineers, as prescribed in subsection  
3 (f), the report required in subsection (d) shall include an ex-  
4 planation of why the Secretary made such decision.

5 OVERSEAS FACILITIES SECURITY

6 SEC. 8. (a) This section may be cited as the "Overseas  
7 Facilities Security Act of 1987".

8 (b)(1) Prior to entering on duty in any position directly  
9 involving the security of any government facility in a foreign  
10 country, every current or prospective government employee,  
11 including but not limited to members of the Foreign Service  
12 and the Armed Forces of the United States, shall take a  
13 polygraph examination limited to determining the possible  
14 vulnerability of that employee to recruitment or manipulation  
15 by a foreign intelligence service for the purpose of engaging  
16 in espionage against the United States. No such employee  
17 shall continue in his or her duty or enter on duty if the results  
18 of such examination indicate possible vulnerability to such  
19 recruitment or manipulation.

20 (2) Employees for whom the examination results indi-  
21 cate no possible vulnerability to such recruitment or manipu-  
22 lation shall, nevertheless, be subject to periodic polygraph  
23 reexaminations. Every such employee shall have at least one  
24 such examination every 12 months.

25 (c) Any employee for whom the examination results in-  
26 dicate possible vulnerability to such recruitment or manipula-

1 tion shall be immediately placed on administrative leave with  
2 pay until such time as a thorough security investigation of  
3 such employee is undertaken and completed, and a determi-  
4 nation is made by the appropriate supervisory official regard-  
5 ing continued fitness of such employee to continue in his or  
6 her security-related position.

7 (d) Whenever the investigation or determination de-  
8 scribed in subsection (c) is undertaken in a foreign country,  
9 the full details of such investigation or determination shall be  
10 reported to the Assistant Secretary of State for Diplomatic  
11 Security within 5 days of the commencement of such investi-  
12 gation or rendering of such determination.

13 (e) The American Ambassador (or the highest ranking  
14 American official, when no Ambassador shall be present) to  
15 the Soviet Union, the German Democratic Republic, Hunga-  
16 ry, Czechoslovakia, Poland, Bulgaria, Rumania, Cuba, and  
17 the People's Republic of China, Laos, Afghanistan, Nicara-  
18 gua, and Yugoslavia countries in which the United States  
19 maintains an official presence shall submit to the Under Sec-  
20 retary of State for Management no later than October 1 of  
21 each year a complete report—

22 (1) on the security of the United States diplomatic  
23 facilities in such country and the integrity of personnel  
24 attached to such facilities during the preceding year;

1           (2) listing any significant efforts by a foreign gov-  
2           ernment or agent thereof to penetrate or compromise  
3           the security of the United States diplomatic facilities,  
4           or to recruit or manipulate any government employees  
5           the aim of conducting espionage against the United  
6           States; and

7           (3) describing the security program or programs at  
8           such facilities for the upcoming year.

9           (f) The Under Secretary of State for Management shall,  
10          within 90 days after receiving the report described in subsec-  
11          tion (e), transmit the report to the Congress, together with—

12                 (1) an evaluation of the security program or pro-  
13                 grams described in subsection (e); and

14                 (2) any further statement, comments, or recom-  
15                 mendations he may submit regarding the security of  
16                 the United States diplomatic facilities and personnel.

17          (g) Any government employee providing physical securi-  
18          ty to any United States diplomatic facility in any country  
19          denominated in subsection (e) shall serve a tour of duty in  
20          such country no longer than 18 months, unless the Under  
21          Secretary of State for Management certifies in writing to the  
22          Congress that such a tour of duty is required to protect the  
23          national security interests of the United States.

○